

In the Court of Appeals of the State of Alaska

Robert Earl Potts,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12608**

Order to Show Cause

Date of Order: **November 14, 2019**

Trial Court Case No. **3AN-15-01280CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Under Alaska Civil Rule 11(b), when an attorney presents a pleading to a court — whether by personally signing the pleading, filing it through an agent, or later advocating it — the attorney certifies that (1) the attorney has conducted a reasonable inquiry into the matter; and (2) to the best of the attorney’s knowledge, information, and belief, the factual contentions presented in the pleading have evidentiary support.

The opening brief submitted to this Court by attorney Alycia S. Cole contains several assertions of fact that appear to significantly misstate the record. In its responsive brief, the State pointed out these factual inaccuracies. Despite this, Ms. Cole did not file a reply brief, or take any further action to correct or explain the allegedly erroneous factual assertions.

On page fifteen of the opening brief, Ms. Cole declares that the trial court erred “by denying Mr. Potts’s Motion in Limine.” To support this assertion, on page eighteen, she declares, “Accusations that Mr. Potts was potentially using marijuana and

was trespassed from the Dimond Center was not probative of any issue in the robberies and caused the jurors to associate troublesome behaviors with Mr. Potts, which was highly prejudicial.” Ms. Cole does not offer a record citation for this assertion. In fact, the record shows that (1) the motion in limine was partially granted; (2) the trial court specifically precluded any testimony regarding the fact that Potts was trespassed from the Dimond Center; and (3) the trial court specifically precluded any testimony regarding the rationale for the trespass (*i.e.*, that Potts may have been using marijuana or engaging in other bad acts).

Additionally, Ms. Cole’s challenge to the trial court’s denial of Potts’s motion to sever rests directly on her assertion that the inculpatory statement of Potts’s co-defendant would have been impossible for the jury to ignore. On page nine of the opening brief, Ms. Cole declares that the co-defendant “maintained that Mr. Potts was the person who committed the robberies, and that he took no active role in the robberies and asked Mr. Potts to drive him home once he learned that Mr. Potts planned to commit the robberies.” Ms. Cole then asserts that “[u]nlike the defendants in *Abdulbaqui*, one defendant in this case was directly implicating the other.”

But the State agreed before trial that it would not seek to admit the co-defendant’s statement implicating Potts, and as the State notes in its brief, the record shows that this inculpatory statement was not admitted at trial. Ms. Cole does not acknowledge these facts.


Because these passages from Ms. Cole's opening brief do not appear to be supported by the record on appeal, thus raising the inference that Ms. Cole violated Rule 11(b) when she submitted the brief, IT IS ORDERED:

1. Ms. Cole is directed to show cause why she should not be sanctioned under Alaska Appellate Rule 510(c) for making the above-described assertions in her opening brief.

2. Ms. Cole's response to this order to show cause must be made under oath, and the response must be submitted by **Monday, December 2, 2019.**

Entered at the direction of the Court.

Clerk of the Appellate Courts


Mindi Johnson, Deputy Clerk

cc: Court of Appeals Judges
Central Staff

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